

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FREDRICK D. KILMER,
Petitioner,

v.

MARION SPEARMAN, Acting Warden,
Respondent.

No. C 11-05560 YGR (PR)

**ORDER LIFTING STAY AND
DIRECTING RESPONDENT TO SHOW
CAUSE WHY THE WRIT SHOULD NOT
BE GRANTED**

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On August 16, 2013, the Court issued an Order granting Petitioner's request for a stay of proceedings while he returned to state court to exhaust his administrative remedies. On February 20, 2014, Petitioner informed the Court that his state proceedings had concluded, and he filed a motion to lift the stay. (Docket No. 37.) However, he did not amend the stayed petition to add the newly-exhausted claims. Instead, Petitioner states that he previously filed a first amended habeas petition containing his exhausted claims. Therefore, Petitioner requests that the Court re-file his "First Amended Petition" filed on August 8, 2013 (Docket No. 26) because it contains all his newly-exhausted claims. The Court construes Petitioner's request as an implied motion for leave to file his first amended petition.

Before the Court are Petitioner's motion to lift the stay and his implied motion for leave to file his first amended petition.

Good cause appearing, Petitioner's motion to lift the stay (Docket No. 37) is GRANTED. Petitioner is also GRANTED leave to file his first amended petition. The Clerk of the Court is directed to re-file Petitioner's "First Amended Petition" (Docket No. 26) and to mark it as filed on February 20, 2014, the date the Court received Petitioner's implied motion for leave to file his first amended petition.

1 The Clerk of the Court shall REOPEN this case and serve a copy of this Order and the First
2 Amended Petition and all attachments thereto upon Respondent and Respondent's attorney, the
3 Attorney General of the State of California. The Clerk shall also serve a copy of this Order on
4 Petitioner at his most current address.

5 Respondent shall file with this Court and serve upon Petitioner, within **sixty (60) days** of the
6 issuance of this Order, an answer conforming in all respects to Rule 5 of the Rules Governing
7 Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent
8 shall file with the answer a copy of all portions of the state trial record that have been transcribed
9 previously and that are relevant to a determination of the issues presented by the petition.

10 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse with the
11 Court and serving it on Respondent within **sixty (60) days** of his receipt of the answer. Otherwise,
12 the petition will be deemed submitted and ready for decision twenty-eight days after the date
13 Petitioner is served with Respondent's answer. Petitioner is reminded that all communications with
14 the Court, whether by way of formal legal motions or informal letters, must be served on
15 Respondent by mailing a true copy of the document to Respondent's counsel.

16 Extensions of time are not favored, though reasonable extensions will be granted. Any
17 motion for an extension of time must be filed no later than **fourteen (14) days** prior to the deadline
18 sought to be extended.

19 Marion Spearman, the current acting warden of the prison where Petitioner is incarcerated,
20 has been substituted as Respondent pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

21 This Order terminates Docket No. 37.

22 IT IS SO ORDERED.

23 DATED: February 26, 2014


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE